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No. 94 - 1000

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

VIRGINIA GASOLINE MARKETERS COUNCIL,
Petitioner

v.

MOBIL OIL CORPORATION,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

AMICUS CURIAE BRIEF OF SERVICE STATION DEALERS OF AMERICA IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Whether rules of implied preemption, such as a holding that a federal law "occupies the field" has any application where the statute contains an express preemption provision ?

2. Whether the Petroleum Marketing Practices Act, 15 USC 2801 et. seq. gives petroleum franchisors the right to be free of state regulation of the substance of franchise agreements by reason of federal preemption, or whether the view of other Courts such as the First Circuit and the dissent that the statute does not give such protection is the correct view ?

3. Whether the 4th Circuit erred in applying preemption decisions under the Airline Deregulation Act and the Employment Retirement Security Act to the Petroleum Marketing Practices Act provisions, which expressly use a different preemption test ?

4. Whether Virginia law governs the relationship between Virginia based Mobil Oil Corporation and Virginia dealers; or whether the Petroleum Marketing Practices Act demands the creation of a body of federal common law to govern motor fuel franchises ?

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INTEREST OF THE AMICUS AND SUMMARY OF ARGUMENT

In the seventeen (17 years) since its enactment, and through 1994 amendments, the statute which governs franchise terminations and non-renewals in an industry that affects the daily life of almost every American, the Petroleum Marketing Practices Act, has gone without review by this Court. Lower courts continue to engage in a struggle, a struggle that led one commentator to call her law review article "Judicial Interpretation of the Petroleum Marketing Practices: Conflict and Diversity." 32 Emory L.J.273.

Nowhere has this conflict been

more keenly felt that in the area of federal preemption; where the rules are determined by where you live and work.

This is an industry that registered over $ 120 billion dollars in sales last year; with over 50% of that total being registered through the 50,000 plus independent service station dealers represented by the SSDA. See generally, 1994 National Petroleum News Factbook. It is a highly visible industry that dots the major intersections throughout the country. While the Court has found time to hear cases dealing with the minutia of other statutes; gasoline retailers have had to continue to deal with the conflict that only this Court

can resolve.

The tension is seen in the two opinions under review, which cite the same cases from other jurisdictions for support of their diametrically opposing views. Indeed, the author of the 4th Circuit opinion expressly relied on a previous decision he had authored, Jiminez v. BP Oil Co.; 853 F.2d 268 (4th Cir. 1988); in which he noted that the 4th Circuit panel took a much more expansive view of federal preemption than other Circuits.(" if this Court reads the preemption section of the PMPA as narrowly as those Courts did (the 2nd and 6th Circuits, Jiminez might be correct in arguing that the goodwill provision of the Maryland Act must be spared from

preemption...) 853 F.2d @ 273, 274 n.1.

The 4th Circuit majority view of the scope of the preemption provision irreconcilably conflicts with decisions not only of the 2nd and 6th Circuits, as it candidly acknowledged in Jiminez; it also strongly and irreconcilably conflicts with on point decisions of the First Circuit; and decisions of the 7th and 9th Circuits, which hold that state contract law, not federal common law will apply to motor fuel franchises.

The real world effect is that those of us who counsel the hundreds of thousands of men and women who work in this industry cannot give our clients good advice as to what the

governing law is.

In addition, the Courts use different preemption tests; with some applying implied preemption principals; as the 4th Circuit did here. These principals should have no application in light of the limited, express preemption provision of the statute.

This issue has been touched upon in Freightliner Corp. v. Myrick, scheduled for argument this term. The SSDA and its members have a powerful interest in seeing consistent preemption analysis.

The federal statute simply prohibits all terminations and non-renewals of motor fuel franchises as a general rule. 15 USC 2802 (a).

It then specifies exceptions to the general rule; 15 USC 2802(b); that a franchisor must prove exist as an affirmative defense; 15 USC 2805.

The Act contains an express and carefully circumscribed preemption provision, 15 USC 2806 which states that

To the extent a provision of the Act applies to a termination or non-renewal, a state may not adopt enforce or continue in effect any provision of any law or regulation, with respect to the termination or non-renewal at issue, unless the provision is the same as the applicable provision of the PMPA.

We believe the key provisions are "To the extent"; "with respect to the

termination or non-renewal" and "the same as".

PMPA preempts state law only IF it applies, and then only "to the extent" it applies. The "extent" to which it applies is to set a broad legal standard. State law tells us what meets the PMPA standard.

For example, 15 USC 2802(b)(2)(c) allows termination upon the occurrence of an event making termination reasonable. 15 USC 2802(c)(11) provides that one such event is a failure by the franchisee to comply with state and local laws.

There is a critical distinction between substituting a state law termination standard, such as "good cause" for the PMPA termination

standard, and the application of state law to the PMPA standards.

For example, PMPA allows termination where there is a "failure" by the franchisee to comply with a reasonable and material "provision of the franchise". 15 USC 2802(a)

We agree that a franchisee could not defeat a termination action based upon a claim that though the PMPA termination standard is meet, the termination cannot go forward because state law imposes a "good cause" termination standard that is not meet.

On the other hand, franchise agreements are creatures of state law. If under the state law that governs the underlying agreement law; something does not qualify as a

"provision of the franchise", in the first place, then the PMPA standard is not met.

This decision holds that state law is to be totally ignored, in spite of the express provisions in the 1978 Act and the 1994 Amendments incorporating state law into the PMPA.

This is why the issue of the appropriateness of application of implied preemption where the statute has an express preemption provision is of such concern and interest to the SSDA.

Under "field preemption" principals, applied by the 4th Circuit in this case, all state law is ousted, whether or not it is consistent with or identical to the federal

regulation. See, e.g. Campbell v. Hussey 368 U.S. 297 (1961).

The express provisions of this statute allow for consistent and identical state regulation. For the second time, a 4th Circuit panel has applied the idea that PMPA "occupies the field" of termination and non-renewal; and rejected the holding of a sister Circuit in a case on all fours.

Next, the PMPA preempts only state laws "with respect to termination". The term "with respect to" connotes specificity and was used by Congress in order to limit the reach of the PMPA preemption provision. The 4th Circuit read this term broadly based upon the much more general term "related to" found in

ERISA and the Airline Deregulation Act.

Unlike ERISA, the preemptive scope of PMPA is limited to the specific subject matter covered by the Act. In particular, we would direct the Courts' attention to the analysis in Shaw v. Delta Airlines 463 U.S. 85, at 96, 97, and especially page 98 (103 S.Ct. 2900) where the Court rejected the idea that ERISA preemption was limited to the specific subject matters covered by the statute.

In Shaw, the Court held the term "related to" was used in ERISA in its broad sense, and thus, the ERISA preemption provision could not be limited only to state laws specifically designed to affect

employee benefit plans. Id.

Moreover, the Court further noted that given the legislative history, the ERISA provision could not be limited to the subject matter relating to the specific subject matter covered by ERISA. The original ERISA bill contained a preemption clause that was limited to the specific subject matters covered by ERISA; just as the PMPA provision is limited. The limited ERISA preemption provision did not survive the conference committee. Id. @ n.17,18,19.

That is why ERISA, and the Airline Deregulation Act as interpreted in Morales v. Trans World Airlines, 112 S.Ct. 2031, (a decision that relies heavily on Shaw, 112 S.Ct.

at 2036, 2037, and in turn was heavily relied upon by the 4th Circuit) preempt broadly, unlike PMPA.

This opinion rewrites the carefully circumscribed PMPA preemption provision to read like that of ERISA or the ADA.

The PMPA, as repealed, and reenacted by this opinion now reads:

"This Act shall preempt any and all State laws insofar as they may now, or hereinafter relate to termination or non-renewal."

The lengthy, convoluted PMPA language does not say that or mean that.

Finally, SSDA vigorously contends that state laws that regulate the content of petroleum industry

franchise agreements are not only the same as the PMPA - they are one and the same therefore they are not preempted.

The PMPA fails to address the issue of the content of franchise agreements. Last term, in O'Melveny and Myers v. FDIC, 512 US___, 129 L.Ed 2d 67 (1994); the Court held that matters left unaddressed in a federal statute are presumably left subject to state law. 129 L.Ed 2d @ 74.

The panel majority, by wiping out the Virginia law, would force the creation of federal common law rules, thus conflicting with the law of other Circuits such as the 7th, which correctly apply state law. See, e.g., Lippo v. Mobil Oil Corp. 776 F.2d 706,

712 (7th Cir. 1985).

Franchise agreements, other contracts and corporations are creatures of state law, not federal common law. Our view that the PMPA term "provisions of the franchise" must be viewed against the backdrop of the state law that gave birth to the underlying contractual agreements is supported by the 1994 Amendments, Public Law 103-371.

The Amendments amend the failure definition, 15 USC 2801(13), to prohibit franchise terminations based upon provisions of the franchise which are illegal or unenforceable under the law of any State; and add an anti-waiver provision, amending 15 USC 2805 to provide that the law governing the

franchise agreement will be the law of the franchisees home state.

Finally, it is important to note that this case arises in the context of a declaratory judgment where there were no terminations or non-renewals. The PMPA preempts only where it actually "applies to a termination or non-renewal". This opinion would apparently find preemption in all contexts; a holding that is clearly wrong.

We have tried in this summary to present a brief and straight forward analysis based upon the plain language of the statute.

The conflict and diversity which this Court needs to address stem in large part from application of implied

preemption tests; and from Courts assigning different weight to different statutory goals in applying those tests.

PMPA simply sets forth uniform federal termination standards which state law cannot replace; but can be applied to. This "uniformity" is in no way disserved by application of state law to the PMPA standards.

The disservice to the law, to the industry, and to the motoring public comes when in the name of "uniformity" Courts misapply implied preemption and threaten to leave us awash in federal common law, exactly what this Court proscribed in O'Melveny & Myers, 112 L.Ed 2d @ 76.

The SSDA was the prime mover of

the 1978 Act; and would have violently opposed an ERISA type preemption that was not limited to the specific subject matter covered by the federal act.

As elegantly set forth in the dissent, and discussed in detail supra, ANY state law that regulates the content of a franchise agreement, would be preempted under the expansive reading of preemption given by the 4th Circuit, irrespective of the context of the case.

Mobil argued below, and may argue here, that some laws would escape preemption, but fails to identify such, and more importantly, fails to identify any principled distinction upon which such a finding would rest.

The majority held that a state law regulating the content of a petroleum industry franchise could not escape preemption based upon the argument that it is "the same as" the applicable provision of the PMPA, because the PMPA is silent on this issue.

Thus, under their view, any law that says anything, such as a state antitrust law that bars exclusive dealing provisions could be preempted because it is not "the same as" the applicable PMPA provision. This is clearly wrong.

For if the state law is stricken down, a vacuum occurs that can only be filled by creation of federal common law.

The problem is graphically illustrated by the facts of this case; where Virginia law is held to be null and void with respect to the franchise agreements between a Virginia corporation and Virginia dealers.

This is not a situation this vital industry can tolerate. We must know what law governs.

Again, we believe that the 1994 Amendments to the Act; which were enacted after this decision was rendered make clear that the governing law is not federal common law, rather it is the law of the franchisee's home state, and at a minimum, the case should be remanded for reconsideration in light of the 1994 Amendments.

Nevertheless, in the interest of

industry efficiency and judicial economy; the time has come - indeed it is long overdue for this Court to at last consider the Petroleum Marketing Practices Act and the scope of its preemption provision.

This is the single most watched, and most important case that has come down the "PMPA Pike".

It is so important that the SSDA was granted leave to engage and oral argument before the 4th Circuit; and we will respectfully request that the same privilege be granted from this Court.

This is truly the one PMPA case that the Court must hear.

ARGUMENT

I. BACKGROUND OF THE PMPA

During the 1970's; both Congress and state legislatures conducted extensive hearings into reports of a pattern of abuse by major oil companies of their franchise relationships with service station dealers.

Several states reacted to this pattern of abuse by enacting laws governing the entire "lifecycle" of the petroleum product franchise relationship from pre-sale disclosure, to course of dealing and course of performance, and ending with termination and non-renewal. Other state laws were more limited in that they simply regulated grounds for and notice of termination and/or nonrenewal. These laws used a variety

of termination standards, such as good cause, objective reasonableness, and subjective good faith. Several contained "laundry lists" of what constituted "good cause", and the notice provisions varied from state to state.

In enacting the PMPA in 1978, Congress took this limited approach to regulating the franchise relationship.

Other states went further by specifying what substantive provisions could be included in the franchise agreements.

In 1975 Virginia enacted legislation that not only specified grounds for and notice of termination (See VA. CODE ANN. 59.1-21:14) and substantive franchise terms (See VA.

CODE ANN. 59-1.21.15), but also mandated disclosure of certain items to prospective franchisees (See VA. CODE ANN. 59.1-21.15). However, many other states had not acted, prompting a call for federal legislation.

Oil companies such as Mobil argued that legislation regulating petroleum industry franchises was not necessary:

"Title I is allegedly designed to protect franchised dealers from bad marketing practices. The language of the bill, however, can only protect the small percentage of dealers that are failures as businessmen or unable or unwilling to provide their customers with value for services rendered. This provision would provide this type of retailer with a degree of security unknown to all other retailers and would be an invitation to abuse the franchise. As such, this bill is anti-consumer and no benefit to the 98% or so of service station dealers who ar successful and satisfied with their contractual rights. There must be literally

thousands of dealers across the country who would support that view and be willing to testify." [Hearings on HR13000 before the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Power (94th Cong., 2d Sess.), Statement of Mobil Oil Corp. at p. 396] (hereinafter "House Hearings on HR 13000, supra.").

These arguments proved unavailing:

"[T]he very act of passing the PMPA indicated Congress' rejection of the view advanced by the major gasoline retailers that remedial legislation was unnecessary because the interests of distributors and franchisees were in harmony."

Slatky v. Amoco Oil Corp., 830 F.2d 476 at 483 (3rd Cir. en banc, 1987).

The explicitly stated purpose of the Act was to "provide for the protection of franchised distributors and retailers of motor fuel . . . and to prevent deterioration of competition in gasoline marketing." (123 Cong.Rec. 4/5/77, p. H10378,

Statement of Rep. John Dingell (the primary author of PMPA)).

As a result, the Circuits have uniformly held that the PMPA's primary purpose is protection of franchisees. This in turn requires a narrow construction of the expressly limited preemption provision.

Those courts which have broadly construed the preemption provision have usually relied on the idea that the state law is preempted because it restricted "franchisor flexibility", and thus conflicts with a goal or objective of the federal law.

This flexibility was largely unchecked prior to the passage of PMPA. The passage of the PMPA limited the flexibility of franchisors such as

Mobil. It was not the intent of Congress to allow the remaining flexibility to subvert the primary purpose of the Act, franchise protection. Id.

II. The Structure of the PMPA

The principal substantive requirement of the Act is set forth in Section 102(a): a general prohibition on termination of any franchise or nonrenewal of the franchise relationship (the ongoing business relationship, past, present and future, between the dealer and the oil company. 15 U.S.C. 2802(a)

As stated in the Senate Report: "[T]ermination is an extreme remedy. It is fundamentally punitive and not compensatory in nature." S. Rep. 95-

732, p. 18 (95th Cong., 2d Sess.), repr., U.S. Code Cong. & Ad. News 873, 876 (1978).

Section 102(b) sets out the exceptions to the general rule. 15 U.S.C. 2802(b), 2803. The Senate Report states: "EXCEPTIONS are provided in subsection (b) of 102 and in section 103." S.Rep. supra at 33, U.S. Code Cong. & Ad. News at 891 (1978).

All the PMPA does is set forth a general prohibition on all terminations or non-renewals; and then set forth affirmative defenses. The construction of the PMPA urged by Mobil would have the exceptions swallow the rule, and thus, violate the rules of statutory construction.

III. The Language and Legislative History

15 U.S.C. 2806(a) states:

"To the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this subchapter." (emphasis added).

This preemption is limited in scope because the PMPA is limited in scope.

That Congress intended a limited

preemption is beyond dispute.

The Committee Reports explain: " Needed is a single, uniform set of rules governing the grounds for termination and non-renewal of motor fuel franchises, and the notice which franchisors must provide franchisees prior to the termination of a franchise or non-renewal of a franchise relationship...the preemption provisions of the legislation ARE LIMITED TO state provisions of state law dealing with termination or non-renewal of franchise relationships. " Sen. Report # 95-731, reprinted in 1978 U.S. Code, Cong. & Ad. News 873.

The writ should be granted because the majority, unlike other

Courts, fails to heed these limits.

IV. EXPRESS v. IMPLIED PREEMPTION

Rules of implied preemption, such as a holding that state law may present an obstacle to Congressional goals, or that Congress has occupied a field so as to leave no room for state regulation have no place in preemption analysis under the PMPA.

"The governing federal statute may, however, restrict its own preemptive scope...When this is the case it seems quite improper for a court even to ask whether a challenged state law which clearly purports to require no such thing nonetheless "conflicts" in some more nebulous sense with the federal statute or its objectives. To engage in such a broader inquiry is to forget

that preemption is ultimately a matter of construing a federal statute, when that statute contains its own preemption or anti-preemption provision, a court that fails to give that provision dispositive effect and instead applies its own preemption criteria is illegitimately disregarding the source of its own authority, and regardless of where its preemption inquiry leads it, is pursuing a fundamentally lawless path." L.Tribe, American Constitutional Law , 2nd Ed 1988 @ 482 n.8.

In Cippolone v. The Liggett Group, 510 U.S.____, 112 S.Ct. 2608, the Court held that the preemptive scope of the Federal Cigarette

Labeling and Advertising Act was

"governed entirely by the express language of each Act. When Congress has considered the issue of preemption, and has included in the enacting legislation a provision explicitly addressing that issue, and when that provision provided a reliable indicium of Congressional intent with respect to state authority, there is no need to infer congressional intent to preempt state laws from the substantive provisions of the legislation. Such reasoning is a variant of the familiar principal of expressio unius est exclusio alterius : Congress' enactment of a provision defining the pre-emptive reach of the statute implies that matters beyond that reach are not preempted." 112 S.Ct. @ 2618.

We believe that the petition should be granted in order to clarify when, if ever, implied preemption should apply.

All statutes have competing goals, and application of "conflict preemption" instead of straight forward statutory construction leads to irreconcilable

results.

The place for statutory goals is to aid in the construction of language that is not clear, not to be an ends in themselves.

With respect to the PMPA, the analysis of the First Circuit in Esso Standard Oil Company v. Dept. of Consumer Affairs, 793 F.2d 431 (1st Cir. 1985) supports the limited express preemption view.

"Indeed, the discussion in the House of Representatives prior to passage of the PMPA reflects an emphasis on protecting the rights of powerless franchisees, and it would have been contrary to that primary objective of PMPA for Congress to have desired that the bill actually reduce protection for franchisees by preempting all substantive state regulation . . . . One member of Congress made a point that the preemption of PMPA would be minimal and would `not preempt the heart' of the state statute currently in effect in his home state of Minnesota." 793 F.2d at 435.

IV. THE SCOPE OF PREEMPTION IS SET OUT CORRECTLY BY THE FIRST CIRCUIT AND OTHER COURTS

In Esso Standard, the provision at issue was a regulation of the Commonwealth of Puerto Rico which allowed a franchisee and franchisor, if unable to agree on a rent, to petition the State Department of Consumer Affairs to set a rent, which in no case could exceed ten percent (10%) of the market value of the property. 793 F.2d at 433. Franchisors claimed the regulation was preempted because PMPA allowed them to charge any rent they wanted, subject only to the good faith, normal course of business constraint, where as the regulation capped rents. 793 F.2d at 433, 434.

The question presented by the case was whether the balance struck by PMPA in the areas of termination and nonrenewal gave the franchisors a substantive right to be free of state regulation of the elements of the franchise agreement. 793 F.2d at 434. **"We do not believe it gives such protection." Id.**

The 1st Circuit, unlike the 4th, found no authority to support the proposition that the PMPA granted a franchisor a right to determine franchise provisions free of all state regulation. 793 F.2d at 435.

Respondent claimed below that the 1st and 4th Circuit rulings do not conflict relying on out of context reading of this statement:

" That is any law that would give a franchisee a cause of action to contest a termination <u>when that termination would otherwise be valid</u> under the PMPA, would be preempted by the PMPA." 793 F.2d @ 434.

The faulty assumption they make is that these terminations, based on contract provisions that are illegal or unenforceable would "otherwise be valid" under the PMPA.

If the contract of the franchise upon which termination is purportedly based is illegal or unenforceable under state law; then it does not qualify as a "provision of the franchise" under the PMPA, and the termination is not valid under PMPA. The First Circuit went on:

"In this case before us, however, a franchisor remains free to terminate or non-renew a franchise if it does not wish to accept the rent

established by DOCA." 793 F.2d @ 434 . (THIS IS PRECISELY OUR POINT - TERMINATIONS MAY GO FORWARD IF BASED UPON CONTRACT PROVISIONS THAT ARE LEGAL AND ENFORCEABLE UNDER STATE LAW). Compare, Darling v. Mobil Oil Corp. 864 F.2d 981 (2nd Cir. 1989); (state law regulating grounds for termination preempted where it prohibited termination based upon VALID franchise provision).

" The Commonwealth's rent control regulation gives neither franchisees or franchisors rights or responsibilities in the specific area of termination or non-renewal greater than those granted by the PMPA.

Rather than governing termination or nonrenewals, Regulation 2758 controls a substantive element of the franchise agreement. There is NO indication from either the language or legislative history that Congress intended to preempt all state regulation of specific components of the franchise agreement." 793 F.2d @ 435.

Mobil's argument, raised extensively in their opposition to the petition for rehearing below, that there is no conflict in the cases, is plainly wrong. The petition must be

granted to resolve this conflict.

V. The 4th Circuit Erred in Relying On the "Related To" Preemption Cases

We extensively addressed the error of applying the ERISA and ADA preemption cases in our summary; and believe that this error by the 4th Circuit is sufficient in and of itself to justify granting the writ.

VI. PMPA DOES NOT CREATE FEDERAL COMMON LAW

If Virginia law does not govern the substance of these franchise agreements; then federal common law is all that is left, because of the PMPA's silence.

As most recently held in O'Melveny and Myers v. FDIC; 512 U.S._____; 129 L.Ed.2d 67, 73, there

is no such thing as federal common law; and a concern for uniformity of law is not sufficient to create such federal common law. Id.@ 76.

The effect of the 4th Circuit ruling would be to force the creation of such a body of law, in contravention of this Courts most recent rulings.

This issue also is sufficient to justify granting the writ.

CONCLUSION

The majority opinion finds the state law preempted due to a hypothetical conflict exists between the PMPA provisions that allow for franchise termination or non-renewal under based upon "provisions of the franchise ".

The 4th Circuit majority erred in failing to recognize that the term "provisions of the franchise" must be defined by reference to the state law governing the underlying agreement. The applicable provisions of the PMPA and the state law challenged here are not only the "same as" they are one and the same, as reinforced by the 1994 Amendments.

The silence of the PMPA evidences Congressional intent to leave the matter to state law.

For if Virginia law does not govern the underlying relationship, between Fairfax, Virginia based Mobil, and Virginia dealers, what does ?

If allowed to stand, the majority opinion would require the creation of

a body of federal common law to regulate petroleum franchises. Overburdened judges and law clerks would be required to take on gasoline dealers as wards of the courts and engage in active supervision of the petroleum marketing industry pursuant to this federal common law, because as Chief Judge Ervin correctly notes any state law that affects the substance of the franchise agreements must be struck down under the 4th Circuit approach, in any context.

The panel majority would find preemption in this action for a declaratory judgment, and sweeps the Virginia laws away in all circumstances based on a hypothetical effect on possible future termination

actions. This rationale would apply to statutes such as antitrust and trade regulation laws, that are not preempted by their federal counterparts. California v. ARC America, 490 U.S. 93 (1989). Compare, Wingard v. Exxon Co. USA, 819 F.Supp 473 (D. S.C. 1993) (state law not preempted as franchisees were in full compliance and could not be subjected to termination, PMPA preempts only "to the extent" it actually applies to a termination or non-renewal).

The key question is what is the applicable law that governs the content of petroleum industry franchise agreements.

We contend it is state law. This is an issue that can only be resolved by this Court, by granting the writ.

Respectfully submitted,

Dimitri G. Daskalopoulos

DATED: Jan. 23rd , 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 1995, I served a copy of the attached Amicus Brief and Brief by mailing copies thereof, U.S. Mail, 1st Class postage prepaid to:

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